UNITED STATES
v.
DAN SEELINGER

IBLA 79-571 Decided February 22, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, which declared the Collins placer mining claim to be null and void. CA 6097.

Affirmed.

1. Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

APPEARANCES: Dan Seelinger, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dan Seelinger has appealed from the July 24, 1979, decision of the California State Office, Bureau of Land Management (BLM), which declared the Collins placer mining claim 1/ to be null and void.

1/ This mining claim is situated in a portion of sec. 17, T. 7 N., R. 8 E., Humboldt meridian, and is more fully described in the notice of location recorded in Book 54, p. 182, Mining Records, Office of the Recorder, Trinity County, California.

A contest complaint was issued by BLM on April 19, 1979, at the request of the United States Forest Service, charging that there are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery. A second charge alleged that the land embraced within the claim is nonmineral in character. This complaint was served on Seelinger on June 6, 1979.

The complaint bore this caveat: "Unless contestee files an answer to the complaint in [the BLM State Office] within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing." This caveat follows Departmental regulations 43 CFR 4.450-6 and 43 CFR 4.450-7(a) which state in pertinent part:

> Within 30 days after service of the complaint * * * the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint * * *.
>
> If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

These regulations are mandatory and may not be waived. Sainberg v. Morton, 363 F. Supp. 1259 (D. Ariz. 1973); United States v. Brunker, 36 IBLA 36 (1978).

As no response was received by BLM within 30 days after June 6, 1979, BLM issued its decision of July 24, 1979, holding that failure to answer was considered an admission of the truth of the charges and that the Collins placer mining claim was null and void.

[1] Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file a timely answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted and the claim is properly declared null and void. United States v. Smith, 67 I.D. 311 (1960); Sainberg v. Morton, supra.

Appellant does not deny that he was served with a copy of the contest complaint, and he does not allege that an answer was filed. His only explanation is that he was confused, thinking that the contest complaint was related to another proceeding in which he is involved with the Department of Justice, and consequently he failed to respond timely to the contest complaint. He does not contend that the action by BLM is incorrect, but seeks to have the BLM decision set aside and that he now be allowed to answer the complaint.

The only question before this Board is whether BLM correctly interpreted the legal consequences of appellant's failure to answer the contest complaint. Appellant has attempted only to argue the merits of his claim without pointing out any error in BLM's finding that as a matter of law he is now precluded from raising such arguments.

Finding no error in the BLM determination, we can only concur in its conclusion that, in failing to file a timely answer to the complaint, appellant is held to have waived the right to be heard on the merits of the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

The facts should be noted here. Appellant states he wrongly assumed a copy of the complaint had been served on his attorney. Nevertheless, after appellant was personally served by certified mail on June 6, 1979, he apparently waited until after receipt of the July 24 decision before contacting the attorney. Appellant now appears pro se. Departmental regulation 43 CFR 4.450-7 directs that the State Office decision be affirmed. That regulation is discussed in Pence v. Andrus, 586 F.2d 733, 741 (1978).

Joseph W. Goss
Administrative Judge